



Overview of Title IX in the High School Context

Presented By: Laura Schulkind
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Agenda

- **Brief Introduction to Title IX**
 - It's not just about athletics
 - Key terms
 - General Duties
- **Specific Legal Obligations**
- **Title IX in the K-12 / Educ. Code Context**
 - Transgender students
 - Mandated reporting
 - Third-party complainants
 - Rights of accused students
 - **Due Process**
 - **Privacy/FERPA**

Introduction to Title IX

A federal statute that prohibits discrimination:

1. On the basis of sex
2. In education programs or activities
3. Receiving federal financial assistance

20 U.S.C. § 1681 *et seq.*

34 C.F.R. § 106 *et seq.*

It's Not Just About Athletics ...

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

--United States Congress, June 23, 1972

•Purpose: To combat the *“corrosive and unjustified discrimination against women in the American educational system.”*

--Senator Birch Bayh of Indiana

It's Not Just About Athletics ...

Title IX Addresses “Sexual Misconduct”:

• **“Sufficiently serious” sexual harassment**

- Conduct that limits or interferes with a student’s ability to participate in or benefit from school programs or activities
- A form of sex discrimination

• **Examples of “sufficiently serious” sexual harassment include**

- sexual violence
- physical acts against a person’s will, including inability to consent (e.g. rape, sexual assault, battery, or coercion)
- repeated unwanted acts. *[2001 Guidance]*

Introduction To Title IX: Key Terms

Quid pro quo harassment

- A faculty or staff member conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct
 - May also involve other individual with the power to make an educational decision or grant a benefit

Introduction To Title IX: Key Terms

Hostile Environment Harassment

1. Unwelcome Conduct

- Of a sexual nature: Sexual advances, requests for sexual favors, nonverbal or physical conduct of a sexual nature; or
- Nonsexual gender-based conduct: Aggression, intimidation, hostility based on sex/gender

2. Severe, persistent, or pervasive

- Affects a student's ability to participate in or benefit from an education program or activity, or
- creates an intimidating, threatening or abusive educational environment

3. By an employee, student, third party

Introduction To Title IX: Key Terms

Sexual violence:

- Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to age or use of drugs/alcohol or intellectual/other disability
- Acts that fall into this category include – rape, sexual assault, sexual battery, sexual abuse, and sexual coercion
- Is a form of sexual harassment

2014 Q&A § A-1

Introduction To Title IX: Key Terms

Education Program or Activity:

- Academic, educational, extra-curricular, athletic, and other programs of school, whether taking place in school facility, bus, or elsewhere

[2001 Guidance; 2011 Dear Colleague Letter; 20 U.S.C. § 1687; 34 C.F.R. § 106.2(h)]

Introduction To Title IX: Key Terms

OCR:

- The Office for Civil Rights
- Within the U.S. Department of Education
- Enforces certain federal civil rights statutes that apply in federally funded education institutions

DCL:

- “Dear Colleague Letter”
- Letters of guidance issued by OCR

General Duties Under Title IX

Upon notice of sexual harassment or sexual violence occurring within an educational program/activity:

- Take **prompt** and **effective** action to:
 - **End** the misconduct
 - **Prevent** its recurrence
- General expectation:
 - Conduct investigation and
 - Institute remedies as appropriate
 - Within 60 days

2001 Guidance

34 C.F.R. § 106.8(b)

Specific Legal Obligations

Title IX Requires:

1. Designation of Title IX Coordinator
2. Policies/Procedures
 - Nondiscrimination Policy
 - Grievance Procedures
3. Designation of Responsible Employees & Reporting of Possible Sexual Misconduct
4. Investigation
5. Interim measures
6. Effective Remedial Action
7. Training and Education

34 C.F.R. § 106 *et seq.*;
2001 Guidance; 2014 Questions & Answers;
Jackson v. Birmingham Bd. of Ed., (2005) 544 U.S. 167

Title IX Coordinator

“Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part”

34 C.F.R. § 106.8(a)

Title IX Coordinator

- Must have at least one person actually serving at all times
 - Position cannot be vacant
- Be independent to avoid potential conflict of interest
- Report directly to senior leadership
 - Ensures senior officials stay informed
 - Provides the appropriate formal and informal authority to coordinate compliance

2015 Title IX Coordinator DCL

Title IX Coordinator

- Title IX Coordinator must have:
 - Qualifications
 - Training
 - Authority
 - Time
- OCR recommends Title IX Coordinator
 - Have knowledge of policies and procedures, *and*
 - Be involved in policy/procedure revision and drafting

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Title IX Coordinator

Visibility:

District must notify students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX

34 C.F.R. § 106.8(a)

Title IX Coordinator

Job responsibilities:

- Coordinate compliance, including procedure for resolving Title IX complaints
- Identify patterns or systemic problems revealed by Title IX reports

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Policies and Procedures

- Nondiscrimination policy
- Designation of Title IX Coordinator
- Designation of responsible employees
- Reporting, receiving and investigating complaints
- Grievance Procedures
- Training for Staff and Students

34 C.F.R. § 106.8

Policies and Procedures

- **Grievance Procedures**

- Easy to find and navigate
- Notice of grievance procedures, including where complaints may be filed
- providing for prompt and equitable resolution
- student and employee complaints alleging any action” prohibited Title IX
- Statement of’ District’ s jurisdiction over Title IX complaints

34 C.F.R. § 106.8

Policies and Procedures

- **Grievance Procedures (con' t)**
 - Definitions of sexual harassment, which includes sexual violence, and an explanation of when it creates a hostile environment
 - Designated and reasonably prompt time frames
 - Written notice of the outcome of the complaint
 - Assurance the District will take steps to prevent recurrence and remedy discriminatory effects

34 C.F.R. § 106.8

Policies and Procedures

- **Grievance Procedures (con' t)**
 - Reporting policies and protocols, including provisions for confidential reporting
 - Who is responsible for evaluating requests for confidentiality
 - Prohibition of retaliation
 - Right to file a simultaneous criminal complaint
 - Available interim measures

2014 Q&A § C-5

Policies and Procedures

- **Grievance Procedures (con' t)**
 - Evidentiary standard
 - Preponderance of the evidence
 - Potential remedies for students
 - Sanctions against perpetrators
 - Sources of counseling, advocacy, and support

2014 Q&A § C-5

Responsible Employees

- **District designation should include:**
 - Employees authorized to take action to redress sexual misconduct, duty to report misconduct,***and***
 - Employees who a student reasonably believes has such authority

2001 Guidance; 34 C.F.R. § 106.8(a); 2014 Questions and Answers, § E-3

Responsible Employees

Duties:

- Must report any possible sexual misconduct to the Title IX coordinator or other appropriate school designee
- Note: Mental health counselors, health center employees, professionals with license requiring confidentiality & volunteer counselors are RE's for training purposes, but not reporting purposes

[2014 Questions and Answers]

Interim Measures—During Investigation Process

- Taken before final outcome of investigation
- Provide complainant with periodic updates on status of the investigation
- To minimize burden on complainant

2014 Q&A § G

Interim Measures

Factors to consider:

- Specific need expressed by complainant
- Age of students involved
- Severity or pervasiveness of the allegations
- Any continuing effects on the complainant
- Whether complainant and respondent share the same classes, transportation
- Whether other judicial measures [restraining order] have been taken to protect the complainant
- Whether complainant or accused are students with special needs

2014 Q&A § G2

Training

- **Required:**
 - Title IX coordinators
 - Investigators
 - Responsible employees
 - Campus security authorities
 - Students

Training

- **Recommended specialized training:**
 - Student athletes and athletic departments
 - International students
 - Teachers in programs with nontraditional learning environments
 - Student discipline panels
 - Staff serving students with special needs

Training: Title IX Coordinator

OCR recommends training:

- Applicable California and federal law, regulations, and policies that overlap with Title IX
- Different facets of Title IX, including regulations, OCR guidance, and District' s Title IX policies and procedures
- Regular training to ensure current knowledge

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Training: Responsible Employees

OCR recommends training should include:

- How to prevent and identify sexual violence
- Attitudes of bystanders that may allow conduct to continue
- Potential for re-victimization by responders and its effects on students
- Appropriate measures for responding to a student who may have experienced sexual violence, including use of non-judgmental language
- Impact of trauma on victims
- The person(s) to whom such misconduct must be reported

2014 Q&A § J-1

Training: Responsible Employee

Training should include reporting obligations:

- What should be included in a report
- Consequences for failing to report
- Procedure for responding to request for confidentiality
- Providing the contact information for the Title IX Coordinator
- Information to provide students

2014 Q&A § J-1

Training: Responsible Employees

Training on information to provide students:

- Responsible employees reporting obligations
- Students option to request confidentiality and available confidential advocacy, counseling, or other support services
- Right to file a Title IX complaint with OCR and a criminal complaint with local law enforcement

2014 Q&A § J-1

Training: Students

OCR recommends:

- Training be age appropriate
- Repeated regularly
- Use of educational methods most likely to help the students retain the information

2014 Q&A § J-4

Training: Students

OCR recommends:

- Training for
 - Student athletes
 - Members of student organizations
- Training at back-to-school nights

2014 Q&A § J-4

Training: Students

OCR recommends training on:

- Title IX and what constitutes sexual violence, including same sex sexual violence under policies
- Definition of affirmative consent, with examples
- How the school analyzes
 - Whether conduct was unwelcome under Title IX
 - Whether unwelcome sexual conduct creates hostile environment
- Reporting options

2014 Q&A § J-4

Training: Students

OCR recommends training on (contd.):

- School's grievance procedure
- Disciplinary code provisions
- Effects of trauma, including neurobiological change
- Role of alcohol and drugs
- Strategies and skills for bystanders
- How to report sexual violence to campus/local law enforcement
- Protections against retaliation

2014 Q&A § J-4

Training: Students

Must post sexual violence prevention and education information on website

1. Common facts & myths about causes
2. Types of sexual violence and how to file internal complaints and criminal charges
3. Access information for campus and community resources
4. Methods of encouraging peer support
5. Information regarding campus, criminal, and civil consequences of committing acts of sexual violence.

Remedial Measures

- Stop the conduct
- Prevent the conduct
- Protect against retaliation
- Duty can arise even where discipline not available
- Duty goes beyond discipline

Title IX in the K-12/High School Context

1. Transgender Students
2. Mandated Reporting
3. Third Party Complainants
4. Rights of the Accused Student
 - Due Process Rights
 - Disabled Student Rights
 - Student Privacy & FERPA

Transgender Students

- OCR terms apply to transgender students
- Apply same Title IX procedures and standards
- Education Code
 - Right to facilities/services consistent with gender identity

2014 Questions and Answers, § B-1, B-2 and Ed Code § 221.5

Mandated Reporting

- In addition to Title IX reporting obligations
- Required to report known or reasonably suspected child abuse
- Purpose of law is to “protect children from abuse and neglect”

Penal Code section 11164 et seq. & Ed Code section 48906

Role of Third Party Complainants

- **Backdrop:**
 - OCR has high level of concern for victims unable to advocate for themselves
 - OCR refers to rights of “third parties” to file complaints
 - Third-party complaints trigger same district obligations
- **Why important here:**
 - Increased likelihood of third-party complaints in K-12 context

Rights of the Accused

Due Process Rights:

- OCR: “Procedures that ensure Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions.”

2001 OCR Guidance “Due Process Rights of the Accused” § X

Rights of the Accused

- **Due process principles:**
 - Clear notice of the charges
 - Right to confront accuser
 - Right to present evidence
 - Right to pursue process

Suspension/Expulsion

Framework

- Right to compulsory full-time education
 - Use expulsion as last resort
- Listed offenses only
- School-related activity
 - On school grounds
 - “Coming or going”
 - Lunch (on or off campus)
 - School-sponsored activity

California Education Code 48100 etc.

Involuntary Transfer to Continuation High School

- Must be based on a finding that the student:
 - committed an act enumerated in Section 48900, or
 - has been habitually truant and irregular in attendance.

Student Records

FERPA: The Family and Educational Rights and Privacy Act of 1974*

- Protects privacy of **student educational records**
- Applies to ***current and former students***
- Requirements apply to all schools that receive funding through the U.S. Department of Education

*20 U.S.C. § 1232g; 34 C.F.R. § 99

Parental Rights Regarding Access to Their Child's Education Records

Parent/guardian (or students 18+) 2-fold rights:

1. Access:

- Inspect and review their child's education records
- Request that the district correct records that parent believes are misleading or inaccurate

2. Privacy

- Consent to the release of information from child's education record.

FERPA: Education Records

- **Personally identifiable information directly related to a student**
- **Maintained by an educational agency**
- **Defined Broadly**
 - Written records, handwriting, print, computer media, video or audio tape, film, and microfilm
- **Does not include**
 - personal knowledge
 - information conveyed orally
 - “Sole possession” records
 - Directory information
 - Law enforcement records
 - Medical records used and maintained only for purposes of treatment

Disclosure of Education/Student Records

- **General Rule:**
 - Signed, written consent to disclose records to third parties.
- **Exceptions to consent:**
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies;
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Thank You!

Laura Schulkind

Partner | San Francisco Office

415.512.3000 | lschulkind@lcwlegal.com

www.lcwlegal.com/Laura-Schulkind